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Before the
Federal Communications Commission **OCT 11 2 1993**

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 In the Matter of the Application of

GAF BROADCASTING COMPANY, INC.,

For Renewal of License of Station
 WNCN (FM), New York, New York

MM Docket No. 93-54

File No.
 BRH-910201WL

To: The Commission

APPLICATION FOR REVIEW

LISTENERS' GUILD, INC. ("Guild"), by its attorney, David M. Rice, hereby respectfully applies, pursuant to 47 C.F.R. § 1.115 (1992), for review by the Commission of the *Memorandum Opinion and Order* of the Review Board, released September 13, 1993 (FCC 93R-50) ("Order"), which denied the Guild's appeal from the *Memorandum Opinion and Order* of Administrative Law Judge Joseph Chachkin, released June 15, 1993 (FCC 93M-360) ("ALJ Order"), which had denied the Guild's *Petition for Intervention* in the above-captioned hearing proceeding and also had denied the Guild's *Motion to Enlarge Issues* therein. Because the ruling of the Review Board was made pursuant to 47 C.F.R. § 1.301 (a), this Application for Review is being filed within thirty days after the release of that ruling, *see* 47 C.F.R. § 1.115 (d), rather than following the final decision of the Review Board, *see* 47 C.F.R. § 1.115 (e) (1).

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The fundamental question presented for review is whether the Review Board's exclusion of the Guild from the hearing and its refusal to order the enlargement of issues requested by the Guild were warranted in light of the Guild's pleadings before the Administrative Law Judge and the Review Board and in light of the applicable statutes and regulations.

The Guild respectfully submits, *see* 47 C.F.R. § 1.115 (b) (2) (i), that the Review Board's *Order* conflicts with the provisions of Section 309 (e) of the Communications Act, 47 U.S.C. § 309 (e), which entitle the Guild, as a petitioner to deny and a party in interest, to participation in a full hearing on the renewal application, and that said *Order* also conflicts with Commission precedents and policies regarding the power of the Presiding Officer to enlarge the hearing issues to include issues which were not considered and dealt with upon reasoned analysis in the *HDO*. It is alternatively submitted, *see* 47 C.F.R. § 1.115 (b) (2) (iii), that to the extent that the Board's *Order* may be found to be consistent with said precedents and policies, the same should be overturned or revised to conform with the overriding provisions of law referred to above. The Guild further submits, *see* 47 C.F.R. § 1.115 (b) (2) (v), that the Review Board's exclusion from the hearing proceeding of the Guild and the issues it proposed to add clearly constituted prejudicial procedural error.

The Review Board has been afforded an opportunity to pass upon all questions of fact and law upon which this application relies.

The Guild recognizes that the Review Board's *Order* was based in major part upon prior rulings of the Commission — the *Hearing Designation Order*, 8 FCC Rcd 1742 (1993) ("*HDO*"), issued by the Chief, Audio Services Division,

Mass Media Bureau, and the Commission's *Memorandum Opinion and Order*, released August 16, 1993 (FCC 93-385) (the "*Reconsideration Order*"), which, *inter alia*, denied the Guild's Petition for Reconsideration of the *HDO* — which were binding upon it. The Guild has initiated judicial review of those orders, *Listeners' Guild, Inc. v. FCC*, No. 93-1618 (D.C. Cir., appeal filed Sept. 14, 1993), however, and is filing the present application for review in order to protect its rights herein should said orders be reversed by the Court of Appeals. Moreover, this application for review is required as a prerequisite for obtaining judicial review of the actions of the ALJ and the Review Board in excluding the Guild from the hearing, *see* 47 C.F.R. § 1.115 (k).

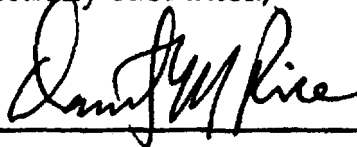
The Guild submits that, notwithstanding the Commission orders to which the Review Board deferred, the Board retained ample authority to grant the Guild's appeal on at least some of the grounds raised by the Guild therein. Most obviously, neither the *HDO* nor the *Reconsideration Order* addressed explicitly the question of whether the Guild's allegations relating to GAF's false reporting of employment data had been referred to the EEO Branch of the Mass Media Bureau (as the ALJ ruled). Yet, the Review Board addressed neither that question nor the question of whether an issue should be designated on the basis of the Guild's allegations. As the gravamen of that proposed issue is misrepresentation — not GAF's EEO compliance — there still has been no reasoned basis articulated by the Commission for refusing to designate this issue for hearing, nor even any confirmation by the Commission that the issue has indeed been referred to the EEO Branch.

CONCLUSION

In light of the significance of the foregoing issues, review of the *Order* of the Review Board should be granted as requested herein. Upon such review, the Commission should reverse the *Order*, permit the Guild to intervene as a party to the hearing proceeding, and enlarge the hearing issues as requested by the Guild.

Dated: October 12, 1993

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David M. Rice", written over a horizontal line.

David M. Rice

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Attorney for Listeners' Guild, Inc.

CERTIFICATE OF SERVICE

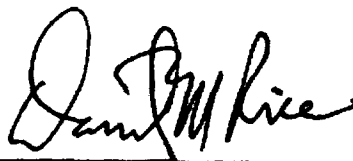
I, DAVID M. RICE, hereby certify that the foregoing "APPLICATION FOR REVIEW" was served this 12th day of October, 1993, by mailing a true copy thereof by United States first class mail, postage prepaid, to each of the following:

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A handwritten signature in black ink, appearing to read "David M. Rice", written over a horizontal line.

David M. Rice